IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, PERUMBAVOOR

Present: - Smt. Smitha George, Motor Accidents Claims Tribunal

Tuesday, the 5th day of August, 2025/ 14th day of Sravana 1947.

O.P. (MV) No. 1671/2020

Claimants :-

1. Krishnakumar C.T. @ Krishnan, S/o Thevan, aged 52 years, Chilambilly House, Chowara P.O., (in Coma Stage) (Aadhar No. 5896 6769 5854) rep. by his son Kiran C.K., S/o Krishnakumar C.T., aged 22 years, Chilambilly House, Chowara P.O. (Aadhar No. 8864 1327 7930) (injured died)

Addl. 2. Bindu Krishnan, Chilambilly House, Chowara P.O.

“ 3. Kiran C.K., S/o Krishnakumar C.T., Chilambilly House, Chowara P.O.

“ 4. Keerthy Krishnan, Chilambilly House, Chowara P.O.

Addl. Petitioners 2 to 4 are impleaded as per order in I.A. 6/2024 dated 01/03/2025

By Advs. P.K. Symon and Elson Symon

Respondents :-

1. Shaji P.K., S/o Kochumuhammed, Pallathukada House, Kandanthara Bhagom, Mudickal P.O.
2. Sandeep C.G., S/o Santha Gopi, Chamamalayil House, Pattimattom.
3. C.A. Sidique, S/o Aboobacker, Chenthara House, Kandanthara, Allapra, Vengola.
4. The Future Generali India Insurance Co. Ltd., 3rd Floor, Central Warehousing Corporation Building No. 2253, Maveli Road, Kadvanthara, Ernakulam.

Addl. 5. Hassaninar, S/o Muhammed, Attathukudy House, Vengola Village,Kandanthara Bhagom.

Addl. 5th respondent is impleaded as per order in I.A. 4/2022 dated 10/10/2022

R1 to R3 &R5 - Exparte
R4 - By Adv. Basil Iype

This Original Petition (MV) coming on 05/05/2025 for final hearing before me and having stood over for consideration to this day the Tribunal passed the following:

AWARD

Originally this petition was originally filed by injured Krishnakumar., represented by his son Kiran as next friend, as an injury case. Subsequently, the injured died, and the petition was amended as one filed u/s 166(1)(c) of the Motor Vehicles Act, claiming compensation of Rs.50,00,000/- for the death Krishnakumar., filed by the wife and children of the deceased, in the capacity of legal heirs.

2. **The facts of the case**:-

On 31.08.2020 at about 6.30 p.m., while the deceased was riding a Motorcycle bearing Regn.No.KL-41/Q-8933 through Perumbavoor – Aluva KSRTC road from east to west and reached Mudickal, Marampilly, an Autorickshaw bearing Reg.No.KL-07/BH-0614 driven by the first respondent in a rash and negligent manner through the same road from same direction took a sudden right turn without care and hit on the Motorcycle ridden by the deceased, resulting in grievous injuries to him. Immediately after the accident he was taken to Sanjoe Hospital, Perumbavoor and treated there as inpatient and he died on 19.11.2020. According to the petitioners the accident occurred due to the rash and negligent riding of the Autorickshaw by the first respondent. The driver, registered owner, insured and insurer of the Autorickshaw are shown as first to fourth respondents respectively. The original driver of the Autorickshaw is shown as fifth respondent.

3. **Version of the respondents**:- First to third and fifth respondents remained absent and were set exparte.

4. Fourth respondent appeared and filed written statement admitting the insurance of the Autorickshaw bearing Regn.No.KL-07/BH-0614 at the time of accident, but denying the rashness and negligence alleged against R5. It is stated that R5 was driving the Autorickshaw with due care and caution and the accident occurred due to the sole negligence of the injured himself, who was riding the Motorcycle in a negligent manner without wearing proper helmet and on reaching the place of occurrence he lost control over the Motorcycle and hit against the Autorickshaw. Since the accident occurred due to the sole negligence of the injured himself, R4 has no liability to pay any compensation to the petitioners. It is further contended that the fifth respondent was not holding valid driving licence at the time of accident. It is further contended that the registered owner of the Autorickshaw neither inform the accident nor produced the vehicular documents for verification. So, there is violation of policy conditions and fourth respondent is not liable to indemnify the third respondent. Fourth respondent also denies the claims under various heads.

POINTS FOR CONSIDERATION:-

5. On the pleadings, the points raised for consideration are as follows:-

(1) Whether the accident occurred due to the rash and negligent driving of R5?

(2) Whether the petitioners are entitled for a compensation as claimed?. If so, what is the quantum.

(3) Who is liable to pay the compensation?

(4) Reliefs and costs.

<u>EVIDENCE</u>

6. No oral evidence is adduced for both sides. The evidence in this case consists of Exts.A1 to A18 and Ext.B1.

7. Perused the evidence on record and heard the counsel for the parties to this petition.

8. <u>Point No.1:</u> Ext.A1 F.I.Statement, Ext.A2 F.I.R, Ext.A3 scene mahazar, and Exts.A4 and A5 AMVI's reports to prove the accident. Ext.A6 is the final report, as per which R1 is charge sheeted for the offence punishable under Sections 279, 337 and 338 of the I.P.C. Ext.A13 is another final report in which it is stated that R5 is the accused and he is charge sheeted for the offence punishable under Sections 279 and 304(A) of IPC. It is also stated in Ext.A13 that R1 is deleted from the list of accused. It is specifically stated in Ext.A13 that the accident occurred due to the rash and negligent driving of the Autorickshaw by the fifth respondent. No evidence, either oral or documentary, is let in to attribute any negligence on the part of the deceased herein, who was riding the Motorcycle on his correct side. So on perusal of records, it is proved that the accident occurred due to the rash and negligent driving of the Autorickshaw by R5. This point is answered accordingly.

9. <u>Point No.2</u>: Ext.A7 is the wound certificate issued from Sanjoe Hospital, Perumbavoor stating that the injured was brought to that hospital on 31.08.2020 at 6 p.m. with injuries sustained in RTA. Ext.A8 is the treatment certificate issued from Sanjoe Hospital, Perumbavoor which shows that the injured was treated in that hospital with the following injuries:

- Right extradural haemorrhage with mass effect and midline shift
- Fracture right tempero parietal one with extension to right mastoid sinus
- Fracture 2^{nd} and 3^{rd} metatarsal right foot
- Multiple abrasions both elbows, left foot and scalp

Ext.A8 further shows that the injured was managed with Craniotomy, tracheostomy under L/A by ENT surgeon, POP slab with crepe bandage application, wound dressing, stapler removal, antibiotics, analgesics, anti-inflamatory drugs, physiotherapy, blood transfusion and supportive medicines and care and discharged from the hospital on 06.11.2020. Ext.A9 is the CT Scan report which shows the following impressions:-

- Large extradural haemorrhage along the right temporal and right parietal convexity causing midline shift of 8 mm to the left side
- Hemorrhagic contusions in the left temporal lobe
- Acute subarachnoid haemorrhage along the falx and tentorium
- Acute subdural haemorrhage along right fronto-temporal convexity
- Pneumocephalus
- Fracture involving the right temporo-parietal bone with extension to the right mastoid sinus
- Right temporo-parietal scalp hematoma

- Hemorrhagic fluid in both maxillary sinuses

Ext.A10 is the treatment summary issued from Medical Trust Hospital, Ernakulam which shows that the petitioner had sustained the following injuries:-

- Head injury – right temporo-parietal EDH; S/P right FTP craniectomy, brain empyema, pan ventriculitis

Inspite of active resuscitation the injured died on 09.11.2020. Ext.A11 is the postmortem certificate of the deceased. Ext.A11 stands to prove the death of the deceased, and that the postmortem has been conducted on 10.11.2020 at 10.40 a.m. The postmortem findings are consistent with death due to multiple injuries sustained to head and chest. Ext.A12 is the inquest report. Ext.A15 death certificate issued from Kochi Municipal Corporation which shows that the injured died on 09.11.2020. Ext.A16 is the relationship certificate issued from Chowara Village showing the petitioners herein as the legal heirs of deceased Krishnakumar. On perusal of records, this Tribunal is convinced that the death of the deceased herein occurred due to the alleged accident, and the petitioners herein as legal heirs of the deceased. Ext.A17 series are medical bills for Rs.8,19,000/-, and that amount is awarded towards treatment expenses.

10. As per the petition, the deceased aged 52 years at the time of accident was a Subcontractor in KSEB and his monthly income is shown as Rs.50,000/-. Ext.A14 is a certificate issued by Sub Engineer in charge, Electrical Section, Aluva which

shows that the deceased was working there on contract basis before 15.12.2004 for 1200 days. But no evidence is let in prove the occupation and monthly income of the deceased. Even then, relying on the decisions of the Hon'ble Apex Court in ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]*** and ***Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd., [(2014) 2 SCC 735]*** and also the decisions of the ***Hon'ble High Court of Kerala in MACA No.3777/2019 and MACA No.3798/2019***, considering the year of accident and the socio-economic conditions prevailing over the period of accident, the notional income of the deceased is fixed as Rs.12,500/- per month. Ext.A18 is the copy of Aadhar card of the deceased showing his date of birth as 20.10.1968. The accident in this case occurred on 31.08.2020, and as such he was 52 years old at the time of accident. So the applicable multiplier in accordance with Step 2 – Paragraph 19 of Sarla Verma's Case read with Paragraph 42, which is reiterated by the Apex Court in the recent decision in National Insurance Co. Ltd. v. Pranay Sethi reported in 2017(4) KLT 66, is '11'. Considering the deceased as a person coming under the category of self-employed below 60 years, going by the dictum laid down in Pranay Sethi 's case cited supra, 10% of the income is to be added to the income arrived as on the date of accident to calculate the future prospects. So the income with future prospects is calculated as Rs.13,750/- (Rs.12,500/- + Rs.1,250/-).

11. The petitioners herein are the wife and children of deceased Krishnakumar. The learned counsel for the petitioners submit that, going by the decision rendered in Sarla Verma's case ***(Sarla Verma and Others vs. Delhi***

Transport Corporation & Another – AIR 2009 SC 3104), considering the fact that the deceased has three dependents – wife and two unmarried children, 1/3rd of his income is to be deducted towards his personal and living expenses. The petitioners herein are the widow and two unmarried children of deceased Krishnakumar. So, considering the fact that the deceased has three dependents, 1/3rd of his income is deducted towards his personal and living expenses. Accordingly, towards loss of dependency, a sum of Rs.12,10,000/- (Rs.13,750 x 12 x 11 x 2/3) is granted.

12. The injured died 71 days after accident, out of which he was in the hospital for 65 days. The petitioners are entitled to get Rs.65,000/- each (Rs.1,000 x 65 days) towards bystander expenses and extra nourishment. The petitioner had undergone Craniotomy. Considering the nature of injuries sustained, Rs.1,50,000/- is awarded towards pain and sufferings.

13. The thumb rule laid down in Paragraph 54 of Pranay Sethi's case cited supra gives clear indication as to the figures for conventional heads viz., loss of consortium as Rs.40,000/-, loss of estate and funeral expenses as Rs.15,000/- each. It further directs that the amount quantified above should be enhanced on percentage basis in every three years, and the enhancement should be at the rate of 10% in a span of three years, in order to bring in consistency in respect of those heads. Hon’ble Supreme Court has pronounced the judgment cited supra on 31st October 2017, and as such the enhancement of 10% to the conventional heads is applicable with effect from 1st November 2020, and another 10% enhancement is applicable with effect from 1st November 2023. Adopting the law laid down by the

Apex Court, those heads are computed accordingly in the following table, by giving 20% enhancement, by awarding Rs.18,000/- each under the heads loss of estate and funeral expenses.

14. Relying on the dictum laid down by the Hon'ble Apex Court in *Pranay Sethi'*s case cited supra, and the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 9581 of 2018 arising out of SLP (Civil) No. 3192 of 2018 (*Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors*), additional first petitioner is entitled to get compensation for loss of spousal consortium. It was further held that the figures for conventional head viz., loss of consortium as Rs.40,000/-, should be enhanced by 10% with effect from 1st November 2020, and another 10% enhancement is applicable with effect from 1st November 2023, and as such the compensation for loss of consortium is re-fixed as Rs.48,000/-. In the case on hand the additional second and third petitioners being the Spouse of deceased Krishnakumar. is entitled to Rs.48,000/- under the count 'Spousal Consortium'. Addl. Petitioners 2 and 3 being the unmarried children of deceased Krishnakumar are entitled to get Rs.48,000/- each under the head ‘Parental Consortium’.

15. So adopting the above principles of law, and also considering the other facts and circumstances of the case, the total amount of compensation is worked out as in the following table:

Sl. No.	Head of Claim Compensation for	Amount Claimed (in Rupees)	Amount Awarded (in Rupees)	Basis – vital details in a nut shell
1	Partial loss of earnings	500000	NIL	
2	Loss of dependency	3000000	1210000	Rs.13750 x 12 x 11 x 2/3
3	Expenses for transport	50000	20000	Admissions + Death
4	Damage to clothes	50000	2000	
5	Funeral expenses	500000	18000	
6	Love and affection	1000000	NIL	
7	Pain and suffering	2000000	150000	
8	Loss of amenities	500000	NIL	
9	Treatment expenses	1000000	819000	Actual medical bills
10	Loss of estate	1000000	18000	
11	Loss of consortium	2000000	48000 96000	Spousal consortium Parental consortium – 3
12	Attendant charges	200000	65000	Rs.1,000 x 65 days
13	Extra nourishment	50000	65000	
	Total	123,50000/- Limited to 5000,000/	**25,11,000/-** =======	

As stated above, the additional first petitioner is the widow and additional second and third petitioners are the children of deceased Krishnakumar. So considering the relationship of the petitioners with deceased Krishnakumar and the extent of their dependency, Rs.7,00,000/- each is allotted to the share of additional second and third petitioners, and the balance award amount with interest and costs shall be allotted to the share of additional first petitioner.

16. Point No.3: It has already been answered in Point No.1 that the accident occurred due to the rash and negligent riding of R5. So R5 is primarily liable to pay the compensation. R2 and R3 being the registered owner and insured of the offending Autorickshaw is vicariously liable to compensate the petitioner. Admittedly,

R4 is the insurer. Ext.B1 is he copy of policy produced by R4. So being the insurer, R4 is liable to indemnify the insured. Hence, it is concluded that R2 to R4 are jointly and severally liable to compensate the petitioner. R1 is exonerated from the liability.

17. It is submitted by the counsel for fourth respondent that, the fifth respondent was not holding a valid driving licence at the time of accident, and I.A.No.3/2022 was filed for an order directing second, third and fifth respondents to produce the driving licence of fifth respondent. But despite service of notice, the driving licence was not produced. So the petition was closed holding that adverse inference can be drawn against second, third and fifth respondents, if so warranted. Hence, I hold that there is no driving licence for the fifth respondent, at the time of accident. In the light of the above discussions I hold that, there is violation of policy conditions, and so fourth respondent is entitled to recover the amount deposited, from second, third and fifth respondents. This point is answered accordingly.

18. Point No.4: In the result, this petition is allowed in part, and an award is passed for an amount of **Rs.25,11,000/-** along with interest @8% per annum from the date of petition (28.10.2020) till realisation, and the petitioners are entitled to get proportionate cost. Fourth respondent is directed to deposit the amount as aforesaid within one month from the date of this award as follows:

Fourth respondent is directed to make payment of Rs.49,373/- towards court fee, and Rs.50,000/- towards Legal Benefit Fund through e-payment facility to MACT, Perumbavoor

Fourth respondent shall pay the balance amount of the compensation with interest and costs to the petitioner by depositing by NEFT or RTGS or any other electronic mode to the credit of the Bank Account of the Motor Accident Claims Tribunal, Perumbavoor, details of which is furnished below:

Name	Name of Bank and Branch	Bank Account Number	Bank IFSC Code
Motor Accidents Claims Tribunal (MACT), Perumbavoor	State Bank of India, Perumbavoor	42795672395	SBIN0008661

The compensation amount due to the petitioners shall be disbursed by transferring directly to the petitioners Bank Account by NEFT or RTGS or any other electronic mode. The account details of the petitioners shall be appended with the Award. The fourth respondent shall submit a letter to this Motor Accidents Claims Tribunal enclosing a copy of the Bank Advice in prescribed format, as per which the deposit was made to the Bank Account of the Motor Accidents Claims Tribunal (MACT) Perumbavoor.

Fourth respondent is entitled to recover the amount so deposited from second, third and fifth respondents.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 5th day of August, 2025.

Sd/-
Smitha George
Judge
Motor Accidents Claims Tribunal.

APPENDIX

Petitioners' Exhibits :-

A1	-	02/09/2020	-	Copy of FIS in Crime No. 1633/2020 of Perumbavoor Police Station.
A2	-	02/09/2020	-	Copy of FIR in Crime No. 1633/2020 of Perumbavoor Police Station.
A3	-	03/09/2020	-	Copy of scene mahazar in Crime No. 1633/2020 of Perumbavoor Police Station.
A4	-	08/09/2020	-	Copy of AMVI report of vehicle No. KL-07-BH-614
A5	-	08/09/2020	-	Copy of AMVI report of vehicle No. KL-41-Q-8933
A6	-	08/10/2020	-	Copy of charge sheet in Crime No. 1633/2020 of Perumbavoor Police Station.
A7	-	02/09/2020	-	Copy of wound certificate issued from Sanjoe Hospital, Perumbavoor
A8	-	31/12/2021	-	Treatment certificate issued from Sanjoe Hospital, Perumbavoor
A9	-	-	-	CT scan reports
A10	-	-	-	Copy of treatment summary issued from Medical Trust Hospital, Ernakulam.
A11	-	10/11/2020	-	Postmortem Certificate
A12	-	09/11/2020		Copy of Inquest report in Crime No. 1633/2020 of Perumbavoor Police Station.
A13	-	05/12/2020	-	Copy of charge sheet in Crime No. 1633/2020 of Perumbavoor Police Station.
A14	-	29/06/2015	-	Certificate issued from KSEB, Aluva.
A15	-	19/11/2020	-	Copy of death certificate of the original petitioner
A16	-	26/06/2021	-	Relationship certificates
A17 & A17(a)	-	-	-	Medical Bills
A18	-	-	-	Copy of aadhar card of the deceased

Respondents' Exhibits :-

B1 - - - Copy of insurance policy

Court Exhibits :- Nil

Witnesses for both sides:- Nil

Id/-
Motor Accidents Claims Tribunal.

MEMO OF COSTS

Petitioner's side:

Court fee	:	₹	49373.00
Addl. Court fee (LBF)	:	₹	50000.00
Stamp for Vakkalath	:	₹	05.00
Stamp on documents	:	₹	20.00
Stamp on petitions	:	₹	10.00
Process Fee	:	₹	90.00
Senior Advocate Fee	:	₹	252400.00
Junior Advocate Fee	:	₹	126200.00
Writing Fee	:	₹	100.00

Total	:	₹	478198.00
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Proportionate cost ₹ **2,40,151/-** allowed.

Sd/-
Motor Accidents Claims Tribunal
//True Copy// (By Order)

Sheristadar

Jb
Compd by: Jpv

NB. The parties should apply as soon as possible for the return of all the documents which they may wish to preserve as the documents are liable to be destroyed after 12 years from this date.

Copy of AWARD

O.P.(MV) No. 1671/2020

Dated: 05/08/2025